

### REMARKS

Claims 29, 50, 64-69, 72-75, 78-80, and 82 are currently pending. Claims 29, 50, 65, 68, and 72-74 have been amended. Support for these amendments can be found in Figs. 42A, 46-46B, and 47 and paragraphs 196 and 198-201 of the originally filed specification. Claims 62, 63, 70, 71, 76, 77, and 81 have been canceled.

Claims 29, 50, and 62-82 have been rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-102 of U.S. Patent No. 6,620,185, and over claims 1-58 of U.S. Patent No. 7,144,414. Applicants have amended claims 29 and 50 to focus the present application on the new matter that was not disclosed or suggested in these prior patents. Applicants respectfully submit that the amended claims are not obvious in view of the claims of the '185 or '414 patents, and request that this rejection be withdrawn.

Claims 65, 68, 69, 74, and 75 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, Examiner argues that the limitation that the "heating device comprises a thermistor" in claims 65, 68, and 69 is misleading. Claims 65 and 68 have been amended to specify that the thermistor or pair of thermistors is/are disposed on an outer surface of the heating device. In addition, the Examiner argues that there is no antecedent basis for the language "the method" of claims 74 and 75. Claims 74 and 75 have been amended to replace this language with the language "The surgical instrument". These claims are believed to be in condition for allowance and it is respectfully requested that the rejection be withdrawn.

Claims 29, 63, 67, and 70-73 have been rejected under 35 U.S.C. 102(e) as being anticipated by Harvie (US 6,620,185). Applicants will discuss this rejection as it pertains to amended claim 29.

Applicants have amended claim 29 to specify that the tip portion of the cannulated tube includes flat areas on a lip of the tip portion and the suture carrying device includes an eyelet configured to receive a portion of the suture and a pair of channels extending from the eyelet, wherein a region of each channel includes a keying feature in engagement with the flat areas of

the tip portion to restrict rotation of the suture carrying device within the tip portion. Harvie does not disclose these limitations. Therefore, claim 29 is in condition for allowance and claims 63, 67, and 70-73, which depend from claim 29, are also in condition for allowance. It is respectfully requested that this rejection be withdrawn.

Claims 29, 50, 62, 63, 67, and 70-82 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Harvie et al (U.S. 6,620,185). Claim 29 has been amended as discussed above and claim 50 has been amended to depend from claim 29. The Harvie reference fails to cure the previously described deficiency of the Harvie reference with respect to claim 29. Therefore, the Harvie reference fails to teach all of the limitations of claims 29 and 50. Claims 29 and 50 are therefore in condition for allowance and claims 62, 63, 67, and 70-82, which depend from claims 29 and 50, either directly or indirectly, are also in condition for allowance. Applicants respectfully request reconsideration and withdrawal of this rejection.

Claims 64 and 66 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Harvie in view of Doi et al (3,584,198). The Doi reference fails to cure the previously described deficiency of the Harvie reference with respect to claim 29. Therefore, the combination of the Harvie and Doi references fails to teach all of the limitations of claim 29, from which claims 64 and 66 depend. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 29.

Claims 65, 68, and 69 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Harvie in view of Lavenuta (US 6,660,554). The Lavenuta reference fails to cure the previously described deficiency of the Harvie reference with respect to claim 29. Therefore, the combination of the Harvie and Lavenuta references fails to teach all of the limitations of claim 29, from which claims 65, 68, and 69 depend. Applicants respectfully request reconsideration and withdrawal of this rejection.

Applicants do not acquiesce to the characterizations of the art. For brevity and to advance prosecution, however, Applicants may have not addressed all characterizations of the art, but reserve the right to do so in further prosecution of this or a subsequent application.

The absence of an explicit response by the Applicants to any of the Examiner's positions does not constitute a concession of the Examiner's positions. The fact that Applicants comments have focused on particular arguments does not constitute a concession that there are not other good arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

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Respectfully submitted,

Date: \_\_\_\_\_

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Norman F. Hanner Jr.  
Reg. No. 55,239

Smith & Nephew, Inc.  
150 Minuteman Road  
Andover, MA 01810  
Telephone: (978) 749-1311  
Facsimile: (978) 684-6417